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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/758,516	01/15/2004	William Orman Wollgast	03006	5804

39047 7590 04/04/2006

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EXAMINER

NEWVILLE, TONI E

ART UNIT PAPER NUMBER

3671

DATE MAILED: 04/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/758,516	<b>Applicant(s)</b> WOLLGAST ET AL.	
	<b>Examiner</b> Toni Newville	<b>Art Unit</b> 3671	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 06 February 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-4 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1 and 4 are rejected under 35 U.S.C. 102(b) as being anticipated by Navarro, US 6038795.

Regarding claim 1, Navarro discloses a digging attachment (10) for securement to a work-type vehicle that could be used for constructing a skimmer box for a swimming pool, comprising:

A connecting frame (17) with extensions (top and bottom arms of 17 in Fig. 2) near the bottom of said connecting frame (17) allowing for the connection to a vehicle latching mechanism;

A base (12), shaped like a box, with five sides and an open end, including: a top side, a bottom side, a left side, a right side (column 2 lines 30-33) and a back side (14) as well as two open cutouts (13);

The said open side has edges (60) that are shaped to cut through the surface;

The back side of said base (12) connected perpendicular to said connecting frame (17) and near the bottom so that the base is directed just above the latching

mechanism and along the opposite side of the extensions providing support when the vehicle is attached (Fig. 1).

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 2 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Navarro, US 6038795.

Regarding claim 2, Navarro discloses a digging attachment for securement to a work-type vehicle that could be used for constructing a skimmer box for a swimming pool, but fails to disclose the base (12) being in dimensions for forming a standard-size skimmer box.

Like Navarro, Powers discloses forming a skimmer box (134) for a swimming pool. Unlike Navarro, Powers discloses excavating a shelf for mounting the skimmer box, the shelf having a depth of 35 inches and a width of 24 inches.

Given the suggestion in Powers, it would have been obvious to one of ordinary skill in the art to modify the base (10) of Navarro to be in dimensions suitable for accommodating a standard size skimmer box, such as 15 to 30 inches wide by 15 to 30 inches high by 15 to 30 inches deep (claim 2), or 24 inches wide by 28 inches high by

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28 inches deep (claim 3), since the base (Navarro; 10) of Navarro, having a horizontal bottom surface, would be ideal for skimmer box construction because of its ability to carve out rectangular ground portions.

5. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Navarro, US 6038795, in view of Powers, US 4976088.

Navarro discloses an attachment for securement to a work-type vehicle as described above regarding claims 1-3, but fails to disclose a method of using the attachment (10) for constructing a skimmer box during swimming pool or spa construction.

Like Navarro, Powers discloses a method for constructing a skimmer box during swimming pool construction. Unlike Navarro, Powers discloses excavating a “work shelf” for accommodating a skimmer box, the work shelf being at the top of an excavated wall surface (column 4 lines 3-11).

Given the teaching in Powers, it would have been obvious to use the base (10) of Navarro to form a skimmer box, including the steps of connecting a skidsteer loader to the base (10), moving the attachment to the swimming pool wall, raising and aligning the attachment to near the top of the wall surface where the skimmer box is to be located, inserting fully the open end of the base of the attachment with a cutting edge into the wall, and raising the attachment to remove dirt and other items from the wall and thus forming the shape for the skimmer box, because the horizontal lower surface

of the base (10) of Navarro could create an even horizontal surface for a skimmer box, without the complicated bucket maneuvering that would be required to produce similar results from a typical excavator.

### ***Response to Arguments***

6. Applicant's arguments filed 2/6/2006 regarding claim 1 has been fully considered but they are not persuasive.

Regarding the applicant's argument that the base 10 in Navarro is not an attachment for forming or constructing a skimmer box, the examiner contends that the device 10 in Navarro is of a size and shape capable of forming such a skimmer box. The device 10 could be easily attached to a work-type vehicle, especially a forklift type machine.

While Navarro may disclose the base 10 being of different dimensions than those claimed by the applicant, a mere change in size does not make one invention patentable over another. Moreover, a skimmer box would need to be of various dimensions based on the swimming pool size, building constraints, etc.

Regarding the applicant's arguments that Navarro does not show extensions near the bottom of the connecting frame 17 allowing for connection to a vehicle latching mechanism, Navarro shows connecting frame 17 having legs comprising extensions which extend along the length of the device 10 (see Fig. 2, near 19). These extensions allow for connection to a vehicle latching mechanism.

Regarding the applicant's arguments that the edges in Navarro will not cut through a digging surface, Navarro discloses the device 10 having narrow edges that would inherently be capable of penetrating a digging surface.

Regarding the applicant's arguments that the connecting frame 17 is not connected perpendicular to the back side, the connecting frame 17 is generally perpendicular to the back side when arms near 19 lie parallel to the bottom of the device 10. Additionally, the base 10 is connected to the connecting frame 17 near the bottom of the connecting frame, the base 10 capable of being directed just above a latching mechanism.

The previous rejection of claim 1 has therefore been repeated in this office action.

7. Applicant's arguments with respect to claims 2 and 3 have been considered but are moot in view of the new ground(s) of rejection.

8. Applicant's arguments, see, filed 2/6/2006, with respect to the rejection(s) of claim(s) 4 under 102(b) as anticipated by Navarro have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of 103(a) as anticipated by Navarro in view of Powers, US 4976088.

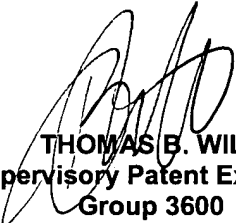
**Conclusion**

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Toni Newville whose telephone number is (571) 272 - 1548. The examiner can normally be reached on Monday - Friday 8 am - 5 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will can be reached on (571) 272-6998. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Toni Newville  
March 30, 2006

  
**THOMAS B. WILL**  
Supervisory Patent Examiner  
Group 3600